

**IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In Re:

**Frederick Kelley Plummer
Betty Ann Plummer**

Debtors

Case No.: 6:11-bk-09917-KSJ

Chapter 7

MOTION FOR SANCTIONS AGAINST CREDITOR WILLIAM HICKEY

COME NOW Debtors, Frederick Kelley Plummer and Betty Ann Plummer, by and through their undersigned attorney, and file this Motion for Sanctions Against Creditor William Hickey and in support thereof states the following:

1. This case was instituted by the filing of a Voluntary Petition under Chapter 7 on June 30, 2011.
2. Debtors listed Creditor, William Hickey, in their petition as lienholder for real property listed at 1029 Magnolia Street, Clermont, FL 34711.
3. The Chapter 7 Individual Debtors' Statement of Intention (Form 8) of their petition states that the said real property is being surrendered.
4. On August 29, 2011, Debtor's Attorney received email from Creditor's Attorney, James L. Homich, with an attached letter stating that the Creditor is unwilling to allow the Debtors to retain the vehicle and expected a Quitclaim Deed for the real property (see attached hereto Exhibit "A").
5. On August 30, 2011, Debtor's petition was amended listing Creditor as lienholder of the 2001 Lincoln LS and the Statement of Intention (Form 8) as retaining the debt.
6. On September 1, 2011, Creditor's Attorney sent a reply email to Debtor's Attorney stating that he will seek a deficiency judgment against the Debtors if

they do not execute a Quitclaim Deed surrendering the real property (see attached hereto Exhibit “B”).

7. On September 19, 2012, Creditor filed a foreclosure action of said real property with Clerk of the Circuit Court, Lake County, Florida, Case No. 2012 CA 003271, William Hickey and Mary Jane Hickey vs. Fred K. Plummer, Betty A. Plummer.
8. The Debtors received their discharge on October 4, 2011 (Doc. No. 34).
9. On October 18, 2013, Debtors filed a Notice of Filing in the foreclosure action (see Exhibit “C” attached hereto).
10. The Notice of Filing lists the Debtors’ bankruptcy information and intention of said real property and states that pursuant to the bankruptcy discharge any judgment entered must be limited to *in rem* relief against the property and not *in personam* relief against the Defendants.
11. On May 29, 2013, Summary Final Judgment for Foreclosure was entered in the foreclosure action (see Exhibit “D” attached hereto).
12. Paragraph 10(b) of the Summary Final Judgment states that the Defendants’ failure to surrender the property to the Plaintiffs in accordance with their approved plan and 11 U.S.C. 722, the Defendants shall be liable for the costs and attorney’s fees associated with this transaction as such costs and fees were incurred after the bankruptcy discharge and the property was not transferred by the Defendants according to the approved plan during the bankruptcy proceedings.
13. The Debtors filed a Chapter 7 bankruptcy and did not have an “approved plan” in the bankruptcy proceedings and therefore are not liable for the costs and attorney’s fees associated with the foreclosure action.

14. The Creditor tried to force the Debtors into signing a Deed in Lieu of foreclosure prior to the entry of the Summary Final Judgment (see Exhibit "E" attached hereto) whereas the Debtors would not agree to.
15. Debtors request that this Court imposed sanctions against Creditor in the amount of \$20,000.00 in addition to attorney's fees of \$5,000.00.

WHEREFORE, the Debtors request this Honorable Court enter an Order Granting Debtors' Motion for Sanctions Against Creditor William Hickey and for such other and further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Sanctions Against Creditor William Hickey has been furnished by electronically or when appropriate by Regular U.S. Mail to the following parties: **Creditor**, William Hickey, 1741 Stafford Springs Blvd, Mount Dora, FL 32757; **Creditor's Attorney**, James L. Homich, 621 E. Fifth Avenue, Mount Dora, FL 32757; **Chapter 7 Trustee**, Arvind Mahendru, 5703 Red Bug Lake Rd., Suite 284, Winter Springs, FL 32708; **U.S. Trustee**, 400 W. Washington St., Suite 5100, Orlando, FL 32801; and **Debtors**, Frederick Plummer and Betty Ann Plummer, 16731 Tequesta Trail, Clermont, FL 34715; this 16th day of August, 2013.

/s/ Joel L. Gross
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